

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HARVEY J. CASS,)
)
Plaintiff,) 4:03cv3411
)
vs.) MEMORANDUM AND ORDER
)
HAROLD W. CLARKE, et al.,)
)
Defendants.)

This matter is before the court on the Notice of Appeal and Motion for Leave to Proceed in Forma Pauperis (“IFP”) on appeal (filing nos. 80 and 81) filed by the plaintiff, Harvey J. Cass, a former prisoner who has been released from custody. The plaintiff appeals the Memorandum and Order (filing no. 77) and Judgment (filing no. 78), in which the court dismissed the above-entitled case.

The court previously granted the plaintiff leave to proceed IFP in the district court, and Fed. R. App. P. 24(a)(3) therefore applies to this appeal.¹ In addition, a district court must determine whether an IFP appeal is taken in good faith. See 28 U.S.C. § 1915(a)(3): "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is

¹Fed. R. App. P. 24(a)(3) states:

(a) Leave to Proceed in Forma Pauperis....

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the district court – before or after the notice of appeal is filed– certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In that event, the district court must state in writing its reasons for the certification or finding.

not taken in good faith." Having considered the record in this action, the court finds that the appeal is taken in good faith. Therefore, the plaintiff's IFP status is continued on appeal, and the Clerk of Court shall process the appeal to the Eighth Circuit Court of Appeals.

SO ORDERED.

DATED this 15th day of November, 2005.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge